

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.
JEREMIAH W. (JAY) NIXON,
Attorney General,

Plaintiff,

v.

TERRY RAY NELSON,
a/k/a www.Paradisestadium.com,
a/k/a Paradise Stadium,

2901 NE Jaudon St. and/or

2710 NE Park St.

Kansas City, MO 64117

DOB 03/27/1965

SSN: 572-65-0997

W/M, Ht.: 6'2", Wt. 275

Hair: Brown, Eyes: Brown

Serve at:

1573 North Shepherd Drive

Camarillo, CA 93010

Defendant.

Case No. CV102-3045 CC

Division 2

**PETITION FOR INJUNCTIVE RELIEF, JUDGMENT FOR
RESTITUTION, COSTS AND CIVIL PENALTIES**

COMES NOW the State of Missouri as Plaintiff in this action, by and through its Attorney General Jeremiah W. (Jay) Nixon. The Attorney General brings this action through his Assistant Attorneys General. In support of its petition, the plaintiff states as follows:

PARTIES AND JURISDICTION

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri and brings this action in his official capacity pursuant to §§407.020 and 407.100 RSMo 2000.

2. Defendant Terry Ray Nelson, a/k/a Paradise Stadium, a/k/a www.paradisestadium.com (collectively hereafter “Nelson”) at all relevant times lived at and/or maintained a principal place of business at 2901 NE Jaudon Street and/or 2710 NE Park Street, Kansas City, Missouri 64117. Defendant Nelson is an individual who now resides in the State of California, and is president/owner of Paradise Stadium a/k/a www.paradisestadium.com. Defendant Nelson can now be found and served with process at 1573 North Shepherd Drive, Camarillo, California, 93010.

3. This Court has subject matter jurisdiction over this action pursuant to §407.100 RSMo 2000, which allows the Attorney General to seek injunctive relief, restitution, and penalties in circuit court for violations of §407.020.

4. Venue is proper in this Court pursuant to §407.100.7 RSMo 2000, because acts which are alleged to violate the Missouri Merchandising Practices Act described below occurred in Clay County, Missouri.

5. This Court has jurisdiction over the defendant pursuant to §506.500 RSMo 2000 because, as is set forth more fully herein, he has transacted business in the State of

Missouri, has entered into contracts within the state, and/or has committed tortious acts within the state.

THE MISSOURI MERCHANDISING PRACTICES ACT

6. Section 407.020, RSMo 2000 provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the State of Missouri, is declared to be an unlawful practice.

7. Section 407.100 RSMo 2000, provides:

1. Whenever it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, he may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

4. The court in its discretion, may enter an order of restitution, payable to the state, as may be necessary to restore to any person who has suffered any ascertainable loss, including but not limited to, any moneys or property, real or personal, which may have been acquired by means of any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter. It shall be the duty of the attorney general to distribute such funds to those persons injured.

5. The court, in its discretion, may appoint a receiver to insure the conformance to any orders issued under subsection 3 of this section or to insure the payment of any damages ordered under subsection 4 of this section.

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, where the violation alleged to have been committed occurred, or where the defendant has his principal place of business.

8. "Advertisement" is defined by §407.010(1) as "the attempt by publication, dissemination, solicitation, circulation, or any other means to induce, directly or

indirectly, any person to enter into any obligation or acquire any title or interest in any merchandise."

9. "Merchandise" is defined by §407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services."

10. "Sale" is defined by §407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit."

11. "Trade or Commerce" is defined by §407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real personal, or mixed and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

FACTS AND VIOLATIONS

12. Defendant Terry Ray Nelson, owns and/or operates Paradise Stadium previously located at 2901 NE Jaudon Street and/or 2710 NE Park Street, Kansas City, Missouri 64117.

13. Defendant solicited Missouri residents to be contestants in a band contest known as "The Tournament of Rock" that was to be held on consecutive weekends between September 29 and October 7, 2001, at Liberty Memorial, Swope Park, and Municipal Auditorium, with the representation that all of the bands that competed in the

“The Tournament of Rock” would be awarded prizes from \$500.00 to \$25,000.00 for their participation.

14. Defendant represented to Missouri consumers that if the bands signed a contract and paid an entry fee of \$500.00 at the time of registration for the tournament, they would receive: 1) fifty (50) tickets to the “The Tournament of Rock” for their band to sell to consumers to attend the tournament, 2) \$500.00 if the band was eliminated in the first round of the tournament, 3) \$1,000.00 if the band was eliminated in the second round of the tournament, 4) \$2,000.00 if the band was eliminated in the third round of the tournament, 5) \$4,000.00 if the band was eliminated in the quarter-final round of the tournament, 6) \$6,000.00 if the band was eliminated in the semifinal round of the tournament, 7) \$10,000.00 if the band was eliminated in the final round of the tournament, and 8) \$25,000.00 if the band wins the tournament.

15. Defendant represented to consumers that there could only be sixty-four (64) bands that could enter the “The Tournament of Rock” and that each band must represent, or be connected to, an area high school.

16. Defendant represented to consumers that every area high school that was represented or connected to a band participating in the tournament would receive a minimum donation of \$1,000.00 to the high school’s music department. The high school represented by the band which won the grand prize of \$25,000, would also receive a donation of \$25,000. A high school representative would need to be present at the “The

Tournament of Rock” to accept the donation or a check would be mailed to the school within 10 business days after the “The Tournament of Rock” ended.

17. Defendant represented to consumers that all songs performed by the bands had to be free of obscenities. Any band that violated this requirement would be disqualified and receive no prize money.

18. Defendant represented that the winning band in each round would be chosen by crowd reaction measured by a decibel meter.

19. Defendant received payments of five hundred dollars (\$500) from sixty-four (64) bands for the entry fee into the “Tournament of Rock.”

20. Defendant on or about September 29, 2001, cancelled the tournament without notice. No prize money was ever paid to any of the contest winners, of those contestants that were allowed to compete, and no refunds were ever issued to any of the contestants.

21. Defendant represented to consumers that refunds of five hundred dollars (\$500) for the entry fee into the “Tournament of Rock” would be provided to the bands who entered and competed, or entered and were not allowed to compete due to cancellation of the “The Tournament of Rock” after the first day of competition.

22. Before, during, after and in connection with the marketing, offering, advertising, and/or selling of the “The Tournament of Rock” band contest, the Defendant, personally and through his officers, owners, directors, agents, employees and representatives

has engaged in deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of material facts, all declared to be unlawful under §407.020 RSMo 2000, in the following respects, among others:

(A) Misrepresenting that all of the bands that entered and competed in “The Tournament of Rock” would be awarded prizes from \$500.00 to \$25,000.00 for their participation in the tournament; and

(B) Misrepresenting to Missouri consumers that when the bands paid a \$500.00 entry fee at the time of registration to enter “The Tournament of Rock,” they would receive: 1) fifty (50) tickets to “The Tournament of Rock” for their band to sell to consumers to attend the tournament, 2) \$500.00 if the band was eliminated in the first round of the tournament, 3) \$1,000.00 if the band was eliminated in the second round of the tournament, 4) \$2,000.00 if the band was eliminated in the third round of the tournament, 5) \$4,000.00 if the band was eliminated in the quarter-final round of the tournament, 6) \$6,000.00 if the band was eliminated in the semifinal round of the tournament, 7) \$10,000.00 if the band was eliminated in the final round of the tournament, and 8) \$25,000.00 if the band should win “The Tournament of Rock”; and

(C) Misrepresenting to Missouri consumers that every area high school that was represented by a band who entered “The Tournament of Rock” would

receive a minimum donation of \$1,000.00 to that high school's music department within 10 business days after the tournament; and

(D) misrepresenting that all of the bands that entered and competed, or were not allowed to compete due to cancellation of the "The Tournament of Rock" after the first day of competition, would be refunded their entry fees of \$500.00.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General prays this Court for the following relief:

A. A judgment finding that the Defendant has violated §407.020 RSMo 2000, as aforesaid;

B. Preliminary and permanent injunctions, pursuant to §407.100.1 RSMo 2000, enjoining the Defendant Terry Ray Nelson, a/k/a Paradise Stadium, and a/k/a www.paradisestadium.com his officers, directors, owners, agents, employees, representatives, attorneys, assigns, and all those acting for them in whatever capacity from:

1. Violating § 407.020, RSMo 2000 by the act, use or employment of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression or omission of any material fact in connection with the sale or advertisement of any merchandise, including but not limited to, the conduct alleged herein.

2. Preliminary and permanent injunctions enjoining Defendant Terry Ray Nelson (a/k/a Paradise Stadium, a/k/a www.paradisestadium.com) from the marketing, advertising, offering, selling and/or promoting, by any means, concerts or other events in the State of Missouri unless and until such time as he posts a bond or letter of credit in the amount of \$25,000.00 as security against any future claim that Defendant has violated the Act, and which shall be due and payable upon presentment of a judgment entered against Defendant for violating the Act..

C. An Order directing the Defendant to pay to the State of Missouri an award of restitution, pursuant to § 407.100.4 RSMo 2000 on behalf of all Missouri consumers who have been injured by the above alleged violations with an additional amount to be paid into the state treasury for the benefit of the Merchandising Practices Revolving Fund as provided in §407.140.1 RSMo 2000.

D. An Order requiring the Defendant to pay all court costs incurred in this action and all costs of investigation and prosecution of this action, including a reasonable attorney's fee incurred by the Attorney General's Office, as provided for by §407.130 RSMo 2000.

E. Civil penalties in the amount of \$1,000.00 for each violation of §407.020 RSMo, as provided in §407.100.6 RSMo;

F. Such further relief as the Court deems just and proper.

Respectfully submitted,
JEREMIAH W. (JAY) NIXON
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